

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC
of ARM 38.5.2001, 38.5.8201, and)	HEARING ON
38.5.8209 and the proposed adoption)	PROPOSED AMENDMENT
of New Rule I regarding)	AND ADOPTION
energy standards for public utilities)	

TO: All Concerned Persons

1. On May 3, 2006, at 10:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.2001, 38.5.8201, and 38.5.8209 and the adoption of New Rule I.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m., April 26, 2006, to advise us of the nature of the accommodation you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, facsimile number (406) 444-7618, or e-mail conniej@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.5.2001 GOAL AND POLICY (1) through (3) remain the same.

(4) The guidelines provide the utilities with policy and planning guidance. With the exception of [RULE I], tThey do not specify the outcome of the planning process nor mandate particular investment decisions. Each utility's plan should be the result of that utility's unique planning process and judgment.

(5) through (11) remain the same.

AUTH: 69-3-103, 69-3-1204, 69-8-1006, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, 69-3-1202, 69-8-1004, 69-8-1005,
MCA

38.5.8201 INTRODUCTION AND APPLICABILITY (1) These guidelines provide policy guidance to default supply utilities (DSU) on long-term default electricity supply resource planning and procurement. With the exception of [RULE I], tThe guidelines do not impose on DSUs specific resource procurement processes nor mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity default supply resource decisions affect the public

interest. A DSU can better fulfill its obligations, mitigate risks and achieve resource procurement goals if it includes the public in the portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the DSU an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the DSU must ultimately make electricity resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.

(2) through (5) remain the same.

AUTH: 69-8-403, 69-8-1006, MCA

IMP: 69-8-403, 69-8-1004, 69-8-1005, MCA

38.5.8209 DEFAULT SUPPLY UTILITY SERVICE RESPONSIBILITIES

(1) A DSU's default service responsibilities are:

(a) to plan and manage its resource portfolio in order to provide adequate, reliable, and efficient annual and long-term default electricity supply services at the lowest total cost; and

(b) to provide all or a substantial amount of the emergency electricity supply requirements of retail customers who have electricity supply service contracts with a licensed electricity supplier or marketer that has failed to deliver the required electricity supply. (A DSU is not required to maintain a reserve of electricity supply to fulfill its emergency supply responsibilities. To the greatest extent practicable, a DSU should recover the costs of providing emergency service from the supplier or marketer that failed to deliver the required electricity or the customers that directly benefited from the DSU's provision of emergency service. A DSU must provide emergency service according to commission-approved tariff schedules.); and

(c) to comply with the provisions of the Montana Renewable Power Production and Rural Economic Development Act, codified at 69-8-1001 through 69-8-1008, MCA, and [RULE I].

(2) remains the same.

AUTH: 69-8-403, 69-8-1006, MCA

IMP: 69-8-403, 69-8-1004, 69-8-1005, MCA

4. The proposed new rule provides as follows:

RULE I RENEWABLE ENERGY RESOURCE STANDARD (1) A public utility's default supply resource procurement plan pursuant to ARM 38.5.8201 through 38.5.8227 or integrated least cost resource plan pursuant to ARM 38.5.2001 through 38.5.2012 must thoroughly document compliance with the Montana Renewable Power Production and Rural Economic Development Act, 68-8-1001, et seq, MCA, hereafter renewable resource standards. Public utilities must consider the requirements of this rule an integral part of the planning and procurement processes described in ARM 38.5.8201 through 38.5.8227 and 38.5.2001 through 38.5.2012.

(2) For public utilities operating in Montana within the geographic boundaries of the Western Electricity Coordinating Council, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Western Renewable Energy Generation Information System. For public utilities operating in Montana within the geographic boundaries of Midwest Reliability Organization, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Midwest Renewable Energy Tracking System.

(3) Before entering into a long-term contract to purchase renewable energy credits, with or without associated electricity, for purposes of complying with the renewable resource standards, a public utility must petition the commission to certify that the renewable energy credits were produced by an eligible renewable resource. The petition may stand on its own or may be part of a request for advanced approval of the price(s), term, and quantity in a proposed contract to purchase renewable energy credits, either with or without associated electricity. If the applicable renewable energy tracking system in [RULE 1(2)] provides a mechanism for ensuring that renewable energy credits are produced by eligible renewable resources, as defined in 69-8-1003, MCA, a public utility may rely on that mechanism. Otherwise a public utility's petition must contain sufficient information on the source of the renewable energy credits to allow the commission to determine whether the source is an eligible renewable resource.

(4) A public utility may petition the commission for a waiver from full compliance with the renewable energy portfolio standards. The petition must include documentation and evidence showing that the public utility has undertaken all reasonable steps to procure renewable energy credits sufficient to comply with the applicable portfolio standards and could not achieve full compliance due to one or more of the following:

- (a) the unavailability of sufficient renewable energy credits;
- (b) a determination that integrating additional eligible renewable resources into the electrical grid would jeopardize the reliability of the electrical system despite reasonable efforts to mitigate reliability concerns;
- (c) full compliance would cause the public utility to exceed the cost caps in 69-8-1007, MCA; and
- (d) other documented reasons beyond the public utility's control.

(5) The commission will rule on a petition for a waiver from full compliance with the renewable portfolio standards after noticing the petition and allowing an opportunity for a public hearing.

(6) A public utility may apply to the commission for advanced approval of a contract for the purchase of renewable energy credits with or without the associated electricity. An application by a public utility for advanced approval must incorporate by reference the public utility's most recent long-term resource plan, must include the public utility's most recent near-term action plan, and must provide:

- (a) a complete explanation and justification of all changes, if any, to the public utility's most recent long-term resource plan and near-term action plan, including how the public utility has responded to all commission written comments on the long-term plan relevant to compliance with the renewable resource standards;

- (b) a copy of the proposed contract, including all appendices and attachments, if any;
 - (c) testimony and supporting work papers demonstrating that the contract enables the public utility's compliance with the renewable resource standards in a manner that, to the fullest extent possible, is consistent with ARM Title 38, chapter 5, subchapter 20 or subchapter 82, whichever is applicable to the filing public utility;
 - (d) a copy of the request for proposals which preceded the proposed contract;
 - (e) a copy of all bids received;
 - (f) testimony and work papers demonstrating all due diligence and bid evaluation conducted by the public utility, including the application of bid rating mechanisms and management judgment;
 - (g) testimony and supporting work papers demonstrating that the price(s), term, and quantity associated with the power purchase agreement are reasonable and in the public interest;
 - (h) testimony and supporting work papers demonstrating the calculation of the utility's avoided costs and associated cost caps provided for in 69-8-1007, MCA;
 - (i) a thorough explanation and justification for any other terms in the power purchase agreement for which the public utility is requesting advanced approval; and
 - (j) testimony and supporting documentation related to any advice received from the public utility's stakeholder advisory committee regarding the proposed contract or the underlying resource/product and actions taken or not taken by the public utility in response to such advice.
- (7) The commission will process a petition for advanced approval under the contested case procedures of the Montana Administrative Procedure Act. The commission will consider requests for expedited processing of petitions for advanced approval, but petitions submitted pursuant to this rule are not subject to the 180 day limit in 69-8-421, MCA.
- (8) If a public utility determines in its ongoing long-term planning process pursuant to ARM 38.5.8201 through 38.5.8227 or 38.5.2001 through 38.5.2012 that the cost of complying with the renewable resource standards will likely exceed the cost caps in 69-8-1007, MCA, the public utility must submit an application to the commission no later than 180 days prior to the beginning of the compliance year. The application must thoroughly document the public utility's efforts to procure the required renewable energy credits, the calculated cost of compliance, work papers showing the most current calculation of the cost caps, an explanation of the methodology that underlies the calculation of the cost caps, and the amount by which the cost cap would be exceeded if the public utility were to comply with the renewable resource standards. Following notice of the application and an opportunity for a public hearing, the commission will issue an order authorizing or denying full or partial forbearance from the renewable resource standard for that compliance year.

AUTH: 69-8-1006, MCA

IMP: 69-8-1004, 69-8-1005, 69-8-1006, 69-8-1007, MCA

5. Adoption of the amendments and new rule is necessary to comply with the statutory mandate in 69-8-1006(2), MCA, and to generally enforce the provisions of the Montana Renewable Power Production and Rural Economic Development Act.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than May 4, 2006, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form no later than May 4, 2006). (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-06.2.1-RUL.")

7. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list should make a written request which includes that name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State March 27, 2006.